

Office Action Summary

Application No.

10/633,938

Applicant(s)

KELLY ET AL.

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 128-134, 145-156, 171-182, 198-209, 212 and 228-239 is/are pending in the application.
- 4a) Of the above claim(s) 130-134, 147-151, 173-177, 200-204 and 228-239 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 128, 129, 145, 146, 152-156, 171, 172, 178-182, 198, 199, 205-209 and 212 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

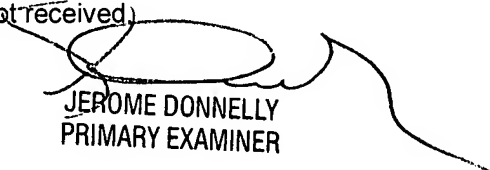
Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


JEROME DONNELLY
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species G, Figure 9 in the reply filed on February 24, 2006 is acknowledged. The traversal is on the ground(s) that all of the embodiments are derived from a single inventive concept. This is not found persuasive because each embodiment discloses a different means for tightening a belt around a patient's torso to induce CPR wherein the tightening means are non-obvious variants of each other. Furthermore, only one of the species includes additional defibrillation means. The requirement is still deemed proper and is therefore made FINAL. Claims 130-134, 147-151, 173-177, 200-204 and 228-239 are also withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species J, Figure 16 there being no allowable generic or linking claim.

Response to Arguments

2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. Upon closer review of the amendment filed July 11, 2007, that amendment is now objected to. In particular, the independent claims were amended to obviate the Lach '164 reference as discussed in the July 6, 2007 interview; however, the amendment included language that constitute new matter as discussed below.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "first and second

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opposite extremities" of the belt, the contact of the belt with the patient's "front, sides and a portion of the back", the "fastening" of the power unit to the belt, "fastening to an apparatus any of said extremities of said belt not already fastened to said apparatus" and the "powered belt tightener coupled to said belt extremities" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The amendment filed July 11, 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no

amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: substantially subsection (A) of each of the independent claims. In particular, wrapping a belt around and "in contact with a substantial majority of a patient's torso, said belt being in continuous contact with the patient's torso, including the front, sides, and a portion of the back of said patient's torso."

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 128-134, 145-156, 171-182, 198-209 and 212 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, the following limitation disclosed substantially in subsection (A) of each of the independent claims was not described in the specification: wrapping a belt around and "in contact with a substantial majority of a patient's torso, said belt being in continuous contact with the patient's torso, including the front, sides, and a portion of the back of said patient's torso."

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 128-134, 145-156, 171-182, 198-209 and 212 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 128, is in not clear what is meant by the phrase, "first and second states". In claims 128 and 171, it is not readily apparent how the belt is moved in a direction to tighten the belt around the patient's chest. In claims 145 and 198, it is not readily apparent how the belt extremities are moved in directions to tighten the belt since the extremities are not shown. The elected species shown in Fig. 9 merely suggests a cable (256) connecting a power unit (254) to a belt (258). Claims 129-134, 146-156, 172-182, 199-209 and 212 are rejected for being dependent on rejected base claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 128 and 129 are rejected under 35 U.S.C. 102(b) as being anticipated by Dedo '579.

7. As to claims 128 and 129, Dedo discloses a device and inherently a method for CPR treating patients comprising wrapping a belt (24), with first and second opposite extremities, around and in contact with a substantial majority of a patient's torso (P), fastening/connecting to a power unit (72) said belt, placing an actuator (74) having first

and second states in said first state to provide power from a power supply, such as a battery or outlet, to the power unit to repeatedly move the belt in a direction to tighten the belt around the patient's chest (see Fig. 9).

Claim Rejections - 35 USC § 103

Claims 145, 146, 152-156, 171, 172, 178, 179-182, 198, 199, 205-209 and 212 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dedo '579 in view of Szpur '418.

8. As to claims 145, 146, 152 and 153, Dedo discloses a device and inherently a method for CPR treating patients comprising wrapping a belt (24), with first and second opposite extremities, around and in contact with a substantial majority of a patient's torso (P) and fastening/connecting to an apparatus/power unit (74) said belt (see Fig. 9). Dedo does not disclose providing a signal to a powered belt tightener to move the belt extremities in directions to tighten the belt around the patient's torso. Szpur discloses a similar mechanism that provides a timed application of force to a belt wherein a signal is provided to a belt tightener to move the belt to tighten around a user (see Col. 4, lines 18-47). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Dedo's belt tightening mechanism with Szpur's belt tightening mechanism such that Szpur's fittings (53 and 54 of hinge 40) are connected to Dedo's belt extremities 104 and 110 to allow for an electric motor controlled compression of the patient's torso since Szpur's mechanism allows for adjusting the time period of repeated compression and tightening of the belt substantially equally around the patient.

9. As to claims 171, 172, 178, 179, 198, 199, 205, 206 and 212, Dedo discloses a device and inherently a method for CPR treating patients comprising wrapping a belt (24), with first and second opposite extremities, around and in contact with a substantial majority of a patient's torso (P) and fastening/connecting to the belt a power unit (74) said belt (see Fig. 9). Dedo does not disclose that power is supplied in regular intervals to the power unit to repeatedly tighten the belt around the patient's torso and that the power unit is adapted to receive power from an electrical source via a cable/line. Szpur discloses a similar belt tightening mechanism having an electrical power unit that is adapted to automatically receive power from an electrical source via a cable/line (128) in regular periodic intervals (see Fig. 3 & Col. 5, lines 9+). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Dedo's belt tightening mechanism with Szpur's belt tightening mechanism such that Szpur's fittings (53 and 54 of hinge 40) are connected to Dedo's belt extremities 104 and 110 to allow for an electric motor controlled compression of the patient's torso since Szpur's mechanism allows for adjusting the time period of repeated compression and tightening of the belt substantially equally around the patient's left and right sides.

10. As to claims 154-156, 180-182 and 207-209, Dedo and Szpur disclose a modified method for CPR as described above (see discussion of claims 152 and 178). Szpur does not disclose that the belt tightener includes a fluid-pressure motor, a hydraulic motor or a pneumatic motor. The examiner takes Official Notice that the prior art includes medical devices that use a variety of motors for actuation of various components. At the time of the invention, it would have been obvious to a person of

ordinary skill in the art to use any of an array of motors including those disclosed by the instant invention since they are provide a readily useable and portable actuation force.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

November 6, 2007


Tam M. Nguyen

JEROME DONNELLY
PRIMARY EXAMINER

